

(d) *No delinquency penalty if fraud assessed.* See paragraph (b)(2) of this section.

(e) *Failure to pay stamp tax.* Any person (as defined in section 6671(b)) who willfully fails to pay any tax payable by stamp, coupons, tickets, books or other devices or methods prescribed by the Code or regulations promulgated thereunder, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of 50 percent of the total amount of the underpayment of the tax.

(f) *Joint returns.* No person filing a joint return shall be held liable for a fraud penalty except for his own personal fraudulent conduct. Thus, for the fraud penalty to apply to a taxpayer who files a joint return some part of the underpayment in such return must be due to the fraud of such taxpayer. A taxpayer shall not be subject to the fraud penalty solely by reason of the fraud of a spouse and his filing of a joint return with such spouse.

[32 FR 15241, Nov. 3, 1967, as amended by T.D. 7320, 39 FR 28279, Aug. 6, 1974; 39 FR 29353, Aug. 15, 1974; T.D. 7838, 47 FR 44252, Oct. 7, 1982]

§ 301.6654-1 Failure by individual to pay estimated income tax.

For regulations under section 6654, see §§ 1.6654-1 to 1.6654-5, inclusive, of this chapter (Income Tax Regulations).

[T.D. 7282, 38 FR 19029, July 19, 1973]

§ 301.6655-1 Failure by corporation to pay estimated income tax.

For regulations under section 6655, see §§ 1.6655-1 to 1.6655-3, inclusive, and § 1.6655-5, of this chapter (Income Tax Regulations).

[T.D. 7059, 35 FR 14549, Sept. 17, 1970]

§ 301.6656-1 Penalty for underpayment of deposits.

(a) *General rule.* If any person is required by the Code or regulations prescribed thereunder to deposit any tax in a government depository that is authorized under section 6302(c) to receive the deposit, and fails to deposit the tax within the time prescribed therefor, a penalty shall be imposed on

such person unless the failure is shown to be due to reasonable cause and not due to willful neglect. The penalty shall be 5 percent of the amount of the underpayment without regard to the period during which the underpayment continues. For purposes of this section, the term “underpayment” means the amount of tax required to be deposited less the amount, if any, that was deposited on or before the date prescribed therefor. Section 7502(e) applies in determining the date a deposit is made.

(b) *Assertion of reasonable cause.* To show that the underpayment was due to reasonable cause and not due to willful neglect, a taxpayer must make an affirmative showing of all facts alleged as a reasonable cause in a written statement containing a declaration that it is made under the penalties of perjury. The statement must be filed with the district director for the district or the director of the service center where the return with respect to the tax is required to be filed. If the district director or the director of the service center determines that the underpayment was due to reasonable cause and not due to willful neglect, the penalty will not be imposed.

[T.D. 7925, 48 FR 55454, Dec. 13, 1983]

§ 301.6656-2 Penalty for overstated deposit claims.

(a) *General rule.* Any person who makes an overstated deposit claim on a return is subject to a penalty equal to 25 percent of such claim, unless it is shown that the overstated deposit claim is due to reasonable cause and not due to willful neglect. This penalty is in addition to any other penalty provided by law, such as the penalty provided by section 6656(a), relating to underpayment of deposits.

(b) *Overstated deposit claim.* An overstated deposit claim is the excess of—

(1) The amount of any internal revenue tax for any period that a person claims, in a return (including an amended return) filed after August 13, 1981, to have deposited in a government depository authorized under section 6302(c) to receive the deposit, over

(2) The aggregate amount for that period that the person has deposited, on or before the date such return for that

period is filed, in a government depository authorized under section 6302(c) to receive the deposit.

An overstated deposit claim includes a claim that deposits have been made when no deposits have been made in an authorized government depository. The existence or amount of an overstated deposit claim is not limited even though the amount described in subparagraph (1) of this paragraph (b) or the amount described in subparagraph (2) of this paragraph (b) exceeds the actual tax liability. For purposes of this paragraph (b), the date a return is considered to be filed is the later of the date the return is due to be filed (not including extensions) or the date the return is actually filed. Section 7502(e) applies in determining the date a deposit is made. The application of this paragraph is illustrated by the following examples.

Example 1. On the date a return is due for the taxable period ended December 31, 1982, Z files the return claiming deposits of tax in the amount of \$150 for that period. Z actually made deposits of \$75 for that period on or before the date the return was due and filed. Z's tax liability for that period is \$150. Z has made an overstated deposit claim in the amount of \$75, the excess of the amount of tax claimed on the return to have been deposited (\$150), over the amount actually deposited (\$75) for that period on or before the date the return was due and filed.

Example 2. On the date a return is due for the quarter ended December 31, 1982, X files the return claiming deposits of tax in the amount of \$200 for that period. X actually made deposits of \$100 for that period on or before the date the return was due and filed. X's tax liability for that period is \$100. X has made an overstated deposit claim of \$100, the excess of the amount of tax claimed on the return to have been deposited (\$200), over the amount actually deposited (\$100) for that period on or before the date the return was due and filed.

Example 3. The facts are the same as in example 2. For that quarter ended March 31, 1983, X files a return on the date it is due, claiming \$100 (the excess of the amount of tax claimed to have been deposited on the prior quarter's return, \$200, over X's liability for the prior quarter, \$100) as a deposit for the quarter ended March 31, 1983. X did not actually deposit any amount for the quarter ended March 31, 1983, on or before the date the return was due and filed. X made an overstated deposit claim of \$100 for the quarter ended December 31, 1982, as described in example 2. For the quarter ended March 31,

1983, X made an overstated deposit claim of \$100, the excess of the amount of tax claimed to have been deposited (\$100), over the amount actually deposited (0) for that period on or before the date the return was due and filed.

(c) *Assertion of reasonable cause.* To show that an overstated deposit claim was due to reasonable cause and not due to willful neglect, a taxpayer must make an affirmative showing of all facts alleged as a reasonable cause in a written statement containing a declaration that is made under the penalties of perjury. The statement must be filed with the district director for the district or the director of the service center where the return with respect to the tax is required to be filed. If the district director or the director of the service center determines that the overstated deposit claim was due to reasonable cause and was not due to willful neglect, the penalty will not be imposed. The fact that a correct amended return has been filed may in some cases be evidence that an overstated deposit claim on the original return was due to reasonable cause and not due to willful neglect, but is not determinative of that issue.

[T.D. 7925, 48 FR 55454, Dec. 13, 1983]

§ 301.6656-3 Abatement of penalty.

(a) *Exception for first time depositors of employment taxes—(1) Waiver.* The Secretary will generally waive the penalty imposed by section 6656(a) on a person's failure to deposit any employment tax under subtitle C of the Internal Revenue Code if—

- (i) The failure is inadvertent;
- (ii) The person meets the requirements referred to in section 7430(c)(4)(A)(ii) (relating to the net worth requirements applicable for awards of attorney's fees);
- (iii) The failure occurs during the first quarter that the person is required to deposit any employment tax; and
- (iv) The return of the tax is filed on or before the due date.

(2) *Inadvertent failure.* For purposes of paragraph (a)(1)(i) of this section, the Secretary will determine if a failure to deposit is inadvertent based on all the facts and circumstances.